

REMARKS

Claims 1-18, 20-31, and 35-44 are pending. Applicant has amended claim 20 to correct a typographical error. Applicant has cancelled claims 22, 23, and 25 and incorporated the recitations of these claims into claim 1. Applicant has also amended claims 24 and 29 to depend from claim 1 rather than cancelled claim 23.

Applicant responds to each of the Action's rejections in the order in which they are presented in the Action.

I. Double Patenting Rejection Addressed

Claims 1-18, 20-31, 35-44 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2, 5, 7-8, 10-29, 32-34, 36, 38, and 45-52 of copending Application No. 10/523,053. As this is a provisional rejection, Applicant respectfully traverses this rejection by electing not to respond to the rejection at this time.

II. Section 102 Rejections Overcome

Claims 1-4, 6, 8, 12-18, 20-24, 26-29, 31, 35-37, and 39-42 have been rejected under 35 U.S.C. §102(b) as being anticipated by Engseth (2,435,647). Applicant respectfully traverses this rejection.

Applicant notes that claim 25 has not been rejected over Engseth. Without acquiescing in the rejections set forth in the Action and in the interest of expediting prosecution of the present application, Applicant has amended claim 1 to include all of the recitations of claim 25 and the claims from which it depends, namely claims 22 and 23. Applicant respectfully requests that this rejection be withdrawn.

Claims 2-4, 8, 8, 12-18, 20, 21, 24, 26-29, 31, 35-37, and 39-43 each depend from patentable independent claim 1. For at least this reason and without acquiescing in the Action's rejections of these claims, Applicant respectfully submits that these dependent claims are also patentable and requests that these rejections be withdrawn. Applicant expressly reserves the right to argue the separate patentability of one or more of these dependent claims at a future date.

III. Section 103 Rejections Overcome

A. Claims 1-18, 20-24, 26-29, 31,35-37, and 39-43 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Davis (2,497,762) in view of Engseth (2,435,647). Applicant respectfully traverses this rejection.

Applicant notes that claim 25 has not been rejected over Davis in view of Engseth. Without acquiescing in the rejections set forth in the Action and in the interest of expediting prosecution of the present application, Applicant has amended claim 1 to include all of the recitations of claim 25 and the claims from which it depends, namely claims 22 and 23. Applicant respectfully requests that the rejection of claim 1 be withdrawn.

Claims 1-18, 20, 21, 24, 26-29, 31, 35-37, and 39-43 each depend from patentable independent claim 1. For at least this reason and without acquiescing in the Action's rejections of these claims, Applicant respectfully submits that these dependent claims are also patentable and requests that these rejections be withdrawn. Applicant expressly reserves the right to argue the separate patentability of one or more of these dependent claims at a future date.

B. Claims 1-18, 20-31, and 35-44 have been rejected under 35 U.S.C. §103(a) as being unpatentable over German (DE 100 17 438) in view of Engseth (2,435,647). In responding to this Action, Applicant assumes that the Office meant to cite German on page 5, line 7 where Davis appears and Applicant's response will be based on this assumption. Applicant respectfully traverses this rejection.

Applicant respectfully submits that combining German in view of Engseth as suggested by the Action would render German inoperable for its intended purpose. If as the Action suggests, one were to provide German with a spring biasing the actuation handle to the second configuration as, for example, taught by Engseth to automatically close the storage container, the device in German would not function. The structure of German operates by:

The path of the plunger (3) which serves to dispense portions of product is limited by a front face (5) at the end of the plunger (3) hitting a front wall (6) of a pump chamber (7). By means of a compression spring (8) which

lies between push button (4) on one side as a seal (9) on the other, the plunger (3) and the push button are returned to the starting position.
(See page 3, line 11-13)

The addition of a biasing spring added to German that would automatically close the storage container as in Figure 1 of Engseth would render German inoperable in that there would be no period where the pumping chamber would be in fluid communication with the container and hence no product would be dispensed. The fill and dispense strokes of German and Engseth are opposed so the combination of the references does not teach or motivate one to combine the references to produce Applicant's claimed invention.

Even if one were to attempt to reconfigure the device of German such that its rest position was in the "dispensed" state, rather than the "filled" state as it is currently configured, and one were able to arrive at a biasing spring configuration that would, in fact, be operable, the **push button** 4 of German would not be properly configured to allow one to readily pull it to actuate the device.

Moreover, even if one were to further reconfigure the push button 4 of German to allow one to readily pull it to actuate the device (and one must admit that at this point the device of German would have been so reconfigured as to make it nearly unrecognizable from the device currently taught by German), such a device would not disclose or suggest a device as recited in amended claim 1. As amended to include the recitations of claims 22, 23, and 25, claim 1 now recites:

wherein the actuation mechanism is manually operable;
wherein the actuation mechanism has an operating member which
is engagable by a user to actuate the actuation mechanism; and
wherein the actuation mechanism is actuated in response to
depression of the operating member into the dispenser. (emphasis added)

The nearly wholly reconfigured German device, in which the German device has been combined with Davis in some operable manner not described in the Action to arrive at a device having a "dispensed" state as its resting state, and in which the push button 4 has been reconfigured as not even hinted at in the Action to become a pull mechanism, does not teach or suggest a device as recited in amended claim 1, which recites an actuation mechanism that is actuated in response to depression of an operating member into the dispenser.

For at least the foregoing reasons, Applicant respectfully submits that claim 1 is patentable over German in view of Engseth and requests that this rejection be withdrawn.

Claims 2-18, 20, 21, 24, 31, and 35-44 each depend from patentable independent claim 1. For at least this reason and without acquiescing in the Action's rejections of these claims, Applicant respectfully submits that these dependent claims are also patentable and requests that these rejections be withdrawn. Applicant expressly reserves the right to argue the separate patentability of one or more of these dependent claims at a future date.

IV. Conclusion

All claim rejections being addressed in full, Applicant respectfully requests the withdrawal of the outstanding objections and rejections and the issuance of a Notice of Allowance. Should the Examiner have any questions regarding the foregoing, Applicant respectfully requests that the Examiner contact the undersigned, who can be reached at (919) 483-9024.

Respectfully submitted,

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